SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000703 09/15/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

PAULA GAWLAS

JEFFREY D ROSS

v.

ARIZONA STATE DEPARTMENT OF TRANSPORTATION
VICTOR MENDEZ
STACEY STANTON

GEOFFREY T JONES

OFFICE OF ADMINISTRATIVE HEARINGS

MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

> The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

The scope of review of an agency determination under administrative review places the burden upon the Petitioner to demonstrate that the hearing officer's decision was arbitrary, capricious, or involved an abuse of discretion.[1] The reviewing court may not substitute its own

[1] *Sundown Imports, Inc. v. Ariz. Dept. of Transp,*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977); *Klomp v. Ariz. Dept. of Economic Security*, 125 Ariz. 556, 611 P.2d 560 (App. 1980); also see *Caretto v. Arizona Dept. of Transp.* 192 Ariz. 297, 965 P.2d 31 (App. 1998).

discretion for that exercised by the hearing officer,[2] but must only determine if there is any competent evidence to sustain the decision.[3]

Only where the administrative decision is unsupported by competent evidence may the trial court set it aside as being arbitrary and capricious.[4] In determining whether an administrative agency has abused its discretion, we review the record to determine whether there has been "unreasoning action, without consideration and in disregard for facts and circumstances; where there is room for two opinions, the action is not arbitrary or capricious if exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached."[5]

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the administrative hearing, exhibits made of record and the memoranda submitted. Here, Plaintiff, Paula Gawlas, seeks review of an administrative order. After a careful review of the record, I find substantial competent evidence to affirm the decision of the administrative agency.

The facts in this case are not in dispute, and are as follows: On August 8, 2002, Plaintiff, Paula Gawlas, was placed under arrest for suspicion of DUI. Plaintiff refused to submit to the blood test, as requested by Officer James J. McDonough of the Scottsdale Police Department. As a result, an implied consent affidavit was submitted to MVD. However, Officer McDonough did not sign the affidavit. At the MVD hearing, Plaintiff objected to the affidavit's admissibility and sought dismissal of the proposed suspension on several grounds. The grounds for this appeal concentrates on the officer's failure to sign, and this certify, the affidavit. Plaintiff asserts that the absence of the officer's signature voids the affidavit and the proposed suspension, and consequently removes the matter from the jurisdiction of the MVD of the Arizona Department of Transportation.

The issue before this court is whether an Implied Consent affidavit is nullified by an officer's failure to sign such affidavit. After a thorough review of Arizona law and the legislative intent, I find that an unsigned Implied Consent affidavit that is filed with the MVD is not nullified by the lack of an officer's signature. A.R.S. §28-1321(D)(2)(A) states:

> If a person under arrest refuses to submit to the test designated by the law enforcement agency as provided in subsection A of this section:

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[2] *Ariz. Dept.of Economic Security v. Lidback*, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).
[3] *Schade v. Arizona State Retirement System*, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); *Welsh v. Arizona State Board of Accountancy*, 14 Ariz.App. 432, 484 P.2d 201 (1971).
[4] *City of Tucson v. Mills*, 114 Ariz. 107, 559 P.2d 663 (App. 1976).
[5] *Tucson Public Schools, District No. 1 of Pima County v. Green*, 17 Ariz.App. 91, 94, 495 P.2d 861, 864 (1972), as cited by *Petras v. Arizona State Liquor Board*, 129 Ariz. 449, 452, 631 P.2d 1107, 1110 (App. 1981).

1. The test shall not be given, except as provided in § 28-1388, subsection E or pursuant to a search warrant.
2. The law enforcement officer directing the administration of the test shall:

(a) File a certified report of the refusal with the department. [emphasis added]

Likewise, A.R.S. §28-1321(E) provides, in part: "The certified report is subject to the penalty for perjury as prescribed by § 28-1561…." Because A.R.S. § 28-1321 does not expressly provide a clear definition of "certified," courts must interpret it "in a way that avoids absurdity and fulfills the legislature's purpose."[6] Courts may consider context, subject matter, historical background, effects, consequences, spirit, and purpose.[7] I will construe A.R.S. A.R.S. §28-1321 broadly to promote its underlying purpose.[8] The purpose and legislative intent of the implied consent law - allowing suspension of driver's licenses for refusal to consent to alcohol testing - is to remove from highways those drivers who may be a menace to themselves and others because of intoxication, to assure prompt revocation of dangerous drivers' licenses, and to increase certainty that impaired drivers are penalized when they refuse to provide evidence of intoxication.[9]

The legislature would never create an Achilles' heel in the implied consent statute, by requiring an officer's signature to avoid complete nullification of the affidavit. This interpretation would punish the law-abiding public, wreaking havoc and death on our highways, and implicitly reward drug and alcohol-impaired drivers for discovering a technical loophole. As Defendant aptly stated, "[I]f Plaintiff's argument were accepted as true, it would mean that DUI-arrestees who refuse blood alcohol testing could avoid the suspension of their driver's licenses as a result of nothing more than a 'slip of the pen.'" The courts in Arizona have addressed the issue of technical errors on these affidavits and determined that such errors are harmless.[10] Further, statutes must be construed in view of the purposes they are intended to accomplish and the evils they are designed to remedy.[11] This court affirms the administrative agency's decision, for it was clearly supported by valid Arizona law, sound logic, and substantial competent evidence.

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[6] *Mail Boxes v. Industrial Com'n of Arizona*, 181 Ariz. 119, 122, 888 P.2d 777, 780 (App., 1995).
[7] *Salinger v. Freeway Mobile Home Sales, Inc.* 110 Ariz. 573, 575, 521 P.2d 1119, 1121 (App., 1974).
[8] See *Wiley v. Industrial Comm'n,* 174 Ariz. 94, 100, 847 P.2d 595, 601 (App. 1993).
[9] *Schade v. Department of Transp.*, 175 Ariz. 460, 857 P.2d 1314 (App. 1993) (purpose); *State v. Waicelunas*, 138 Ariz. 16, 672 P.2d 968 (App. 1983) (legislative intent).
[10] *Miernicki v. Arizona Dept. of Transp., Motor Vehicle Div.*, 183 Ariz. 542, 905 P.2d 551, (App. 1995).
[11] *Senor T's Restaurant v. Industrial Commission of Arizona*, 131 Ariz. 360, 363, 641 P.2d 848, 851 (Ariz., 1982); also see *State v. Berry*, 101 Ariz. 310, 419 P.2d 337 (App., 1966).

IT IS THEREFORE ORDERED DENYING all relief as requested by the Plaintiff in her complaint, and affirming the decision of the defendant Arizona Department of Transportation.

IT IS FURTHER ORDERED that counsel for the Defendant shall prepare and lodge a judgment consistent with this minute entry opinion no later than October 24, 2003.